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Please cancel claims 2 and 14.

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As the limitations of claims 2 and 14 have been incorporated into claims 1 and 13 respectively, Applicants hereby reinstate claims 3 and 15.

Claims 10 and 22 have been amended to more accurately reflect some aspects of the invention.

**The Objection to the Drawings**

As requested by Examiner, Applicants have corrected FIG. 3 to show a slider 27. As sliders are disclosed in paragraph [0009] of Applicants' Specification as filed, no new matter has been added. Corrected drawing sheets are submitted herewith.

**The Objection to the Specification**

As requested by Examiner, Applicants have amended the Specification to recite a non-gusseted portion. As Applicants' figures as filed show bags having sides with non-gusseted portions, no new matter has been added.

**The Double Patenting Rejection**

Applicants' Power of Attorney, submitted herewith, includes the undersigned attorney. A corrected terminal disclaimer, also submitted herewith, is signed by the undersigned attorney and thus now overcomes the double patenting rejection.

**The Rejections under 35 U.S.C. §§ 103(a)**

Claims 1, 10, 13, and 22 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,687,848 to *Scholz et al.* ("Scholz"), in view of U.S. Patent No. 3,417,675 to *Ausnit* ("Ausnit"). Applicants respectfully traverse, noting that neither reference teaches every element of Applicants' claims as amended. More specifically, neither reference teaches a standup pouch having a pour spout located along a side edge. Applicants further note that these references teach away from their combination.

Claims 1, 10, 13, 22, 32, and 33 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,941,643 to *Linkiewicz* ("Linkiewicz"), in view of U.S. Patent

No. 6,007,246 to *Kinigakis et al.* ("*Kinigakis*"). Applicants respectfully traverse, noting here also that neither *Linkiewicz* nor *Kinigakis* teach a standup bag having a pour spout located along a side edge, and that both references teach away from their combination.

Claims 4 and 16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Linkiewicz* in view of *Kinigakis* and in further view of U.S. Patent No. 3,387,701 to *Schneider et al.* ("*Schneider*"). Applicants respectfully traverse, noting that none of these references teach a standup bag having a pour spout located along a side edge, and that both *Linkiewicz* and *Kinigakis* teach away from combination with *Schneider*.

#### *Scholz and Ausnit*

As noted previously, *Scholz* and *Ausnit* both teach flat bags. Neither references discloses a standup bag. Accordingly, claims 1 and 13 as amended are patentable over both *Scholz* and *Ausnit* for at least the reason that they recite a "standup bag . . ." The remaining claims depend from either claim 1 or claim 13, and are thus also patentable for at least this same reason.

Furthermore, *Scholz* specifically teaches away from combination with references such as *Ausnit*. In particular, as noted by Examiner, *Ausnit* teaches the use of zipper-type fasteners (Office Action, page 6). However, *Scholz* explicitly teaches against use of zipper-type fasteners. In particular, *Scholz* teaches that its invention is intended to provide hermetically-sealed bags for use in storing moisture-curable synthetic splinting materials that require a moisture-impermeable seal (Col. 1:33-40). *Scholz* goes on to teach that zipper-type fasteners do not provide hermetic seals, and are thus undesirable:

The opening must be sealed between uses to avoid moisture penetration of the package and, therefore, curing of the product within the package. The disclosed methods of sealing the opening include clamps, such as tongue and groove scissor clamp; moisture-proof pressure-sensitive adhesive tape; a "ZIPLOC™" brand-type seal; and gaskets used in conjunction with spring-loaded compression, leverage clamping or screw action devices.

These methods have proven less than desirable in use. The more secure of the devices are difficult to use which increases the amount of time the package is open during use, thereby allowing moisture to enter and harden the material therein. Conversely, the sealing methods which are easy to use form seals of questionable integrity which allow moisture penetration into the package even when the seal is closed.

(Col. 2:29-42) (emphases added)

In other words, *Scholz* is directed toward applications which require hermetic seals. Thus, *Scholz* employs magnetic fasteners specifically because they provide a hermetic seal, and specifically teaches away from use of zipper-type fasteners such as the fasteners of *Ausnit*, as they do not provide hermetic seals. Accordingly, claims 1, 10, 13, and 22 are patentable over the combination of *Scholz* and *Ausnit* for at least the reason that the references teach away from each other, and should not be combined for purposes of 35 U.S.C. § 103(a).

### *Linkiewicz and Kinigakis*

*Linkiewicz* and *Kinigakis* also do not disclose every element of Applicants' claims as amended. *Linkiewicz* discloses a gusset bag, not a standup bag. While Examiner argues that the bag of *Linkiewicz* can in some instances stand on its own when turned on its side, Applicants note that those of ordinary skill in this art consider gusset bags to be distinct from standup bags, regardless of whether gusset bags can stand on their sides.

*Kinigakis* discloses true standup bags. However, *Kinigakis* does not disclose a standup bag having a pour spout located along a side edge. Rather, its pour spout 24 is located at an angle relative to its side edge (e.g., FIG. 1).

Accordingly, *Linkiewicz* does not disclose standup bags at all, and thus cannot disclose standup bags having pour spouts located along a side edge. *Kinigakis* also does not disclose standup bags having pour spouts located along a side edge. Claim 1 as amended is therefore patentable over both *Linkiewicz* and *Kinigakis* for at least the reason that it recites "a standup bag" having "the pour spout and the reclosable fastener located along the non-gusseted portion of the first side edge and oriented substantially parallel to the first side edge . . ." Similarly, claim 13 is patentable over both references for at least the reason that it recites "a standup bag" "wherein the reclosable fastener and the pour spout are further located along the non-gusseted portion of the first side edge." The remaining claims depend from either claim 1 or claim 13, and are thus also patentable for at least this same reason.

Furthermore, *Linkiewicz* and *Kinigakis* teach away from their combination in a number of ways. First, *Kinigakis* teaches that angled reclosable fasteners located at a corner are superior, as they provide more directional dispensing (Col. 8:30-32). In contrast, it is well-known that the horizontally-oriented fasteners of *Linkiewicz* will dispense contents in a less-directional fashion.

Thus, *Kinigakis* teaches away from horizontally-oriented fasteners such as those of *Linkiewicz*, as they offer less desirable dispensing characteristics.

Second, *Linkiewicz* teaches reclosable fasteners that can extend across 50% or more of the width of a bag (e.g., Col. 4:40-45). In contrast, *Kinigakis* teaches that its reclosable fastener should extend across less than 50% of the width of the bag, so that a shorter and thus cheaper fastener can be used (e.g., Col. 8:16-21). *Kinigakis* thus teaches away from *Linkiewicz* in that it teaches the use of shorter, cheaper fasteners than those used in *Linkiewicz*. While *Linkiewicz* does state that its fasteners can be shorter than 50% of the width of its bags, it should be noted that *Linkiewicz* also teaches that its fasteners can be longer (e.g., Col. 4:40-45). Accordingly, *Kinigakis* still teaches away from *Linkiewicz* in that, while *Linkiewicz* teaches that its fasteners can be both shorter and longer than 50% of the width of its bag, *Kinigakis* teaches that its fasteners should always be shorter.

Third, *Kinigakis* teaches that reclosable fasteners located at a corner are advantageous in that they provide for easy first opening by simply cutting a single corner of the bag (Col. 8:22-26). In contrast, first openings of the *Linkiewicz* bags involve cutting both horizontally along zip closure 30, and vertically to detach the peal seal 27. By teaching toward easy first openings, *Kinigakis* also teaches away from the more difficult first opening of *Linkiewicz*.

#### *Linkiewicz, Kinigakis and Schneider*

*Schneider* does not remedy the deficiencies of *Linkiewicz* and *Kinigakis*. *Schneider* does not teach a reclosable fastener at all. Thus, *Schneider* cannot teach a standup bag having a reclosable fastener located along a side edge. Accordingly, Applicants' claims as amended are patentable over *Linkiewicz*, *Kinigakis* and *Schneider* for at least the same reasons as above.

*Linkiewicz* and *Kinigakis* both teach away from *Schneider*. In particular, *Schneider* teaches a bag that must be cut in order to form a pour spout. *Schneider's* bags cannot be resealed, thus allowing the bags' contents to spoil or otherwise go bad. *Linkiewicz* and *Kinigakis* teach reclosable fasteners specifically designed to allow for resealing so as to prevent this problem.

Accordingly, Applicants' amended claims 1 and 13 are now patentable over each of these references for at least the reasons that the references do not teach standup bags having reclosable fasteners along a side edge, and that the references teach away from their combinations. The remaining claims depend from either claim 1 or claim 13, and are thus patentable for at least this same reason.

U.S. Patent Application No. 10/723,376  
Attorney Docket No. M-16842-4P

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CONCLUSION

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In view of the above, it is respectfully submitted that Claims 1, 4, 10, 13, 16, 22, and 32-33 are now in condition for allowance.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 50-2257.

Respectfully submitted,

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